

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,

Plaintiff

v.

DAVID E. GORSKI,

Defendant.

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) No. 1:12-cr-10338-FDS-1
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**DEFENDANT DAVID GORSKI'S MOTION TO STAY ORDER OF
SEPTEMBER 12TH PENDING APPEAL**

Defendant David Gorski hereby moves to Stay the Court's Order of September 12, 2014, ordering Legion and Mintz Levin to turn over documents to which Legion and Defendant Gorski claim to be protected by the attorney-client privilege. Defendant Gorski adopts and incorporates by reference the arguments in favor of the stay set forth in Intervenor Legion Construction, Inc.'s Motion to Stay ("Legion's Motion") filed earlier today.

In addition to the arguments set forth in Legion's Motion, Defendant Gorski submits that a stay is necessary to protect his right to a fair trial. If the Order is not stayed, these documents will not only be able to be used at trial, but also a host of additional witnesses may be called as witnesses at trial. The trial may turn into a collateral trial as to the merits of Mintz Levin's advice. Witnesses who otherwise would not invoke their Fifth Amendment rights might do so because of an untested finding of crime-fraud. Moreover, the Government has indicated its intent to use the Court's crime-fraud finding, and perhaps the documents themselves, to file a

renewed motion to disqualify counsel. Therefore, Mr. Gorski's choice of counsel may be affected by an untested ruling as well.

Because so much is at stake with respect to Defendant Gorski's trial rights, in addition to all of the reasons set forth in Legion's Motion, Defendant Gorski respectfully submits that this Court should stay its Order to allow the First Circuit Court of Appeals to rule on the appropriateness of the Order.

Defendant Gorski consents to the exclusion of time from the Speedy Trial Act Between the date of this Motion until a final ruling on its and Legion's appeals of the Court's Order.

Respectfully submitted,
DAVID GORSKI
By his attorneys,

/s/ Tracy A. Miner
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Dated: September 15, 2014

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served by ECF on counsel for the government on September 15, 2014.

/s/ Tracy A. Miner
Tracy A. Miner